

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 3348 OF 2000

M/S POLYCAN INDUSTRIES

Appellant (s)

VERSUS

COMNR. OF TRADE TAX, U.P. LUCKNOW(U.P.)

Respondent(s)

(With office report)

Date: 17/08/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA

HON'BLE MR. JUSTICE S.H. KAPADIA

HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Appellant(s) Mr. B.S. Banthia,Adv.

For Respondent(s) Ms. Shobha Dikshit, Sr. Adv.

Ms. Savitri Pandey, Adv.

Mr. Kamendra Mishra,Adv.

Mr. Rajeev Kumar Dubey, Adv.

Ms. Rashmi Singh, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Appeal stands disposed of in terms of the signed order. The
re will be

no order as to costs.

(K.K. Chawla)
Court Master

(Jasbir Singh)
Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3348 OF 2000

M/S POLYCAN INDUSTRIES

Appellant (s)

VERSUS

COMNR. OF TRADE TAX, U.P. LUCKNOW(U.P.)

Respondent(s)

O R D E R

This Appeal is against the Judgment dated 17th May, 1999 passed by the

Allahabad High Court.

Briefly stated the facts are as follows:-

The Appellant, claiming to be a new unit, applied for exemption from sales

tax under the provisions of the Uttar Pradesh Trade Tax Act, 1948 (hereinafter

referred to as "the Act"). The Divisional Level Sales-tax Exemption Committee

(hereinafter called "the Committee") rejected the application of the Appellant inter

alia on the following grounds:-

- manent
- Stamp-
- Value of
- been
- "1. Capital investment is more than 3 lakhs. Per registration has not been issued under the Factories Act.
 2. Agreement of the land has been completed on paper of Rs.10/- which is under registration.
 3. Lists of the machines have not been received. the building has not been certified from C.A.
 4. On the date of production, the unit has not registered."

The Appellant filed an Appeal before the Trade Tax Tribunal. The Trade

Tax Tribunal held that there was force in the submission that the Committee should have given an opportunity of hearing to the Appellant. However, it refused to interfere on the ground that admittedly the Appellant's unit was on land in respect of which the Appellant only had a registered Agreement to Sell. The Tribunal held that to avail of the exemption both land and building must be owned by the unit.

The Revision filed before the Allahabad High Court had been dismissed by the impugned Judgment. The High Court has only considered one aspect i.e. whether both land and building must be owned by the unit. The relevant provision reads as follows:-

"On land or building or both owned or taken on lease for a period

of not less than seven years by such dealer or allotted to such dealer by any Government company or any corporation owned or controlled by the Central or the State Government."

The High Court has held that a strict interpretation must be given to this clause as it deals with an exemption provision. The High Court has held that on a strict interpretation unless the land was actually owned by the unit, the exemption would not be available.

After this Appeal was admitted, a conflict between the decisions of this Court in the case of State Level Committee And Another v. Morgardshammar India Ltd., reported in (1996) 1 SCC 108 and in the case of Commissioner of Sales Tax v. Industrial Coal Enterprises reported in (1999) 2 SCC 607 was noticed. The matter was thus referred to a 3-Judge Bench in order to consider whether the above-

mentioned provision should receive a strict or a liberal interpretation. It is, therefore, before this Bench.

Having heard parties and perused the documents, we are of the view that the interpretation must be in accordance with the wording of the provision. As stated above, the relevant wordings are "on land or building or both". A plain and simple reading of these words indicates that to avail of the exemption, even presuming the term "owned" means "actually owning", the ownership could be either of the land or of the building or of both. Therefore, the decisions of the Tribunal

and the High

Court which proceeded only on the basis that the land was not owned would not be correct. It would also have to be considered whether or not the building was owned by the Appellant.

The Appellant claims that they own the building. On behalf of the

Respondent it is stated that this question has not been looked into and therefore at

this stage it is not possible to state whether or not the building was as owned by the

Appellant. Further the other points on which exemption had been denied will also

require looking into.

The Committee has not stated anything on the aspect of building being

owned by the Appellant. The Committee had also not given to the Appellant an

opportunity of being heard. The Tribunal and the High Court have not looked into

the other aspects raised by the Committee and not considered whether building was

owned by the Appellant. We, therefore, feel that the correct course would be to remit

the matter back to the Committee for consideration on merits. We accordingly do so.

Amongst other things the Committee will also consider whether or not the building is

owned by the Appellant. The Committee will grant to the Appellant an opportunity

of being heard.

With these directions, the Appeal stands disposed of. There will be no order

as to costs.

.....J.

(S.N. Variava)

.....J.

(S.H. Kapadia)

.....J.

(Tarun Chatterjee)

New Delhi;

August 17, 2005.